

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WASHINGTON ENVIRONMENTAL
COUNCIL and SIERRA CLUB
WASHINGTON STATE CHAPTER,

Plaintiffs,

v.

THEODORE (“TED”) L. STURDEVANT,
DIRECTOR, WASHINGTON STATE
DEPARTMENT OF ECOLOGY, in his
official capacity, MARK ASMUNDSON,
DIRECTOR, NORTHWEST CLEAN AIR
AGENCY, in his official capacity, and
CRAIG T. KENWORTHY, DIRECTOR,
PUGET SOUND CLEAN AIR AGENCY,
in his official capacity,

Defendants,

WESTERN STATES PETROLEUM
ASSOCIATION,

Intervenor-Defendant.

No. 2:11-cv-00417-MJP

INTERVENOR-DEFENDANT’S NOTICE
OF SUPPLEMENTAL AUTHORITY

The parties’ cross-motions regarding the merits of Plaintiffs’ claims in this litigation have been fully briefed and are now pending with this Court. Oral argument has been scheduled for November 22, 2011. This notice is being provided to alert the Court to supplemental authority in

INTERVENOR-DEFENDANT’S NOTICE
OF SUPPLEMENTAL AUTHORITY (2:11-cv-00417-MJP) - 1

1 the form of a federal district court decision issued on October 17, 2011 after submission of all
2 briefs in this matter.

3 Attached is a copy of *In re Polar Bear Endangered Species Act Listing and § 4(d) Rule*
4 *Litigation*, 2011 U.S. Dist. LEXIS 119476 (D.D.C. Oct. 17, 2011). The principal holdings of the
5 decision – that the polar bear 4(d) rule is lawful under the Endangered Species Act and rational,
6 but that the U.S. Fish and Wildlife Service failed to comply with the National Environmental
7 Policy Act – are not relevant here. However, in the course of reaching these holdings, the court
8 addressed in detail the inability of current knowledge and science to link greenhouse gas
9 emissions from any source and climate change at a given location. *See id.* at *47-*49. For
10 example, the court found that:

11 In a memorandum summarizing the most recent findings on this issue by the
12 leading international climate science research organizations, the United States
13 Geological Survey determined that “[i]t is currently beyond the scope of existing
14 science to identify a specific source of CO2 emissions and designate it as the
15 cause of specific climate impacts at an exact location.” . . . Similarly, in a
16 memorandum to the Service, the Environmental Protection Agency Office of Air
17 and Radiation observed that “[t]he climate change research community has not
yet developed tools specifically intended for evaluating or quantifying end-point
impacts attributable to the emissions of [greenhouse gases] from a single source,
and we are not aware of any scientific literature to draw from regarding the
climate effects of individual, facility-level [greenhouse gas] emissions.

18 *Id.* at *48 (citations to administrative record omitted).

19 The above-cited aspects of the *In re Polar Bear* decision are directly relevant to
20 matters addressed, authorities cited and testimony provided by Defendant-Intervenor
21 regarding the merits at Dkt. 50 §§ II.A and V, and Dkt. 52. In addition, this supplemental
22 authority bears upon the sufficiency of Plaintiffs’ standing, which is premised upon
23 conjecture, and inadmissible speculation and opinion testimony by unqualified lay
24 declarants, each alleging, contrary to all scientific evidence, that greenhouse gas
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INTERVENOR-DEFENDANT’S NOTICE
OF SUPPLEMENTAL AUTHORITY (2:11-cv-00417-MJP) - 2

1 emissions of Washington refineries are linked to climate change effects in Washington.

2 *See* Dkt. 50 at 33, Dkt. 61 at 21-22.

3
4 DATED: October 25, 2011.

5 STOEL RIVES LLP

6
7 /s/ Jeffrey W. Leppo
Jeffrey W. Leppo, WSBA No. 11099

8 Attorneys for Intervenor-Defendant
9 Western States Petroleum Association

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2011, I filed a copy of foregoing document with the Clerk of the Court for the United States District Court – Western District of Washington by using the CM/ECF system. Participants in this Case No. 2:11-cv-00417 who are registered CM/ECF users will be served by the CM/ECF system.

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/s/ Jeffrey W. Leppo

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